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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,989	06/26/2003	Minoru Yonezawa	P 0304491	3885
909	7590	03/06/2007	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			DANIELSEN, NATHAN ANDREW	
P.O. BOX 10500			ART UNIT	PAPER NUMBER
MCLEAN, VA 22102			2627	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/06/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/603,989	YONEZAWA, MINORU
	Examiner	Art Unit
	Nathan Danielsen	2627

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 January 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2,6,12 and 16 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 2,6,12 and 16 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 08 January 2007 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

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DETAILED ACTION

1. Claims 2, 6, 12, and 16 are pending. Claims 1, 3-5, 7-11, 13-15, and 17-19 were canceled in applicant's amendment filed 08 January 2007.

Claim Objections

2. Claim 6 is objected to because "irradiates the optical disk which is rotated by the rotation control portion, with a laser beam or receives reflected wave," in claim 6 should be --irradiates the optical disk, which is rotated by the rotation control portion, with a laser beam, or receives a reflected wave,--. A similar correction should be made in claim 16. Additionally, claim 6 is objected to because "a rotation control portion controls" should be --a rotation control portion which controls--. Claims 6 and 16 are objected to because the phrase "on the side of the optical head" should be changed to --on the side closest to the optical head--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 2, 16, and 12 are rejected under 35 U.S.C. 103(a) as being obvious over Ono et al (US Patent 6,996,046; hereinafter Ono), in view of Nagata et al (US Patent 6,456,584; hereinafter Nagata).

Regarding claims 6 and 12, Ono discloses an optical disk apparatus (and associated method) comprising:

a rotation control portion which controls rotating of an optical disk having an information recording layer (col. 3, lines 42-47 and figure 1);

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an optical head which irradiates the optical disk which is rotated by the rotation control portion, with a laser beam or receives reflected wave, and performs recording processing or reproducing processing (figure 1);

a waiting position decision portion which detects physical properties of each region in the optical disk after the recording processing or reproducing processing is finished, and decides a waiting position of the optical head according to the physical properties (system controller 12 in figures 1 and 3); and

a control portion which controls a position of the optical head according to the waiting position decided by the waiting position decision portion in order to move the optical head to wait (col. 7, lines 1-35 and figure 4),

wherein the waiting position decision portion decides the waiting position at a position before a boundary line of the unrecorded region by a predetermined amount toward the side of the recorded region (col. 7, lines 1-35 and figure 4).

However, Ono fails to disclose where, when the unrecorded region is present in each of a plurality of recording layers of the optical disk, the waiting position decision portion gives priority to the unrecorded region located in the recording layer on the side of the optical head.

In the same field of endeavor, Nagata discloses where, when the unrecorded region is present in each of a plurality of recording layers of the optical disk, the waiting position decision portion gives priority to the unrecorded region located in the recording layer on the side of the optical head (col. 15, lines 20-39).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the functionality of the apparatus of Ono with that of Nagata, for the purpose of ensuring an ideal transmittance of the first layer (closest to the optical head) when recording and/or reproducing data on/from the second layer (col. 13, line 55 through col. 14, line 21).

Regarding claims 2 and 12, Ono, in view of Nagata, discloses everything claimed, as applied to claims 6 and 16, respectively. Additionally, Ono discloses where the waiting position decision portion detects physical properties of each region in the optical disk from the reflected wave from the optical disk

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by the optical head, and distinguishes the information recording layer into an unrecorded region and a recorded region where the recording processing has been performed on the basis of the detection (col. 7, lines 1-35 and figure 4).

Citation of Relevant Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - a. Sugiyama et al (US Patent 5,414,451), Araki et al (US Patent Application Publication 2002/0110068), and Wierenga (US Patent 6,552,985) disclose apparatuses which determine which layer to give recording priority to based on physical characteristics of the layers.

Response to Arguments

6. Applicant's arguments, see pages 6 and 7, filed 08 January 2007, with respect to the rejection(s) of claim(s) 6 and 16 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ono and Nagata.

Closing Remarks/Comments

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Danielsen whose telephone number is (571) 272-4248. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:00 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on (571) 272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan Danielsen
02/28/2007

ND

WAYNE YOUNG
SUPERVISORY PATENT EXAMINER